

Wage and Hour Division, Labor

§519.16

authorization shall continue in effect for one year from the date of forwarding of the application unless, within 30 days, the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the 30-day period of review.

(c) Upon receipt of an application for a certificate, the officer authorized to act upon such application shall issue a certificate if the terms and conditions specified in this subpart are satisfied. To the extent he/she deems appropriate, the authorized officer may provide an opportunity to other interested persons to present data, views, or argument on the application prior to granting or denying a certificate.

(d) Until April 30, 1976, if a certificate is issued there shall be published in the FEDERAL REGISTER a general statement of the terms of such certificate together with a notice that, pursuant to §519.19, for 45 days following such publication any interested person may file a written request for reconsideration or review. Thereafter, applications and certificates will be available for examination in accordance with applicable regulations in Washington, DC, and in the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers) for institutions of higher education in its area. A period of 60 days will be provided after certificate issuance during which any interested person may file a written request for reconsideration or review.

(e) If a certificate is denied, notice of such denial shall be sent to the employer, stating the reason or reasons for the denial. Such denial shall be without prejudice to the filing of any subsequent application.

§519.15 Conditions governing issuance of full-time student certificates.

Certificates authorizing the employment of full-time students at subminimum wage rates shall not be issued unless the following conditions are met:

(a) Full-time students are available for employment at subminimum rates; the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) The employment of full-time students will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates.

(c) Abnormal labor conditions such as a strike or lockout do not exist in the units of the campus for which a full-time student certificate is requested.

(d) The data given on the application are accurate and based on available records.

(e) There are no serious outstanding violations of the provisions of a full-time student certificate previously issued to the employer, nor have there been any serious violations of the Fair Labor Standards Act (including Child-Labor Regulation No. 3 and the Hazardous Occupations Orders published in part 570 of this chapter) which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

(f) The subminimum wage rate(s) proposed to be paid full-time students under temporary authorization or under certificate is not less than 85 percent of the minimum wage applicable under section 6 of the Act.

(g) Full-time students are not to be employed by an institution of higher education at subminimum wages under this subpart in unrelated trades or businesses as defined and applied under sections 511 through 515 of the Internal Revenue Code, such as apartment houses, stores, or other businesses not primarily catering to the students of the institution.

(h) Certificates will not be issued where such issuance will result in a reduction of the wage rate paid to a current employee, including current student employees.

§519.16 Terms and conditions of employment under full-time student certificates and under temporary authorization.

(a) A full-time student certificate will not be issued for a period longer

than 1 year, nor will it be issued retroactively. It shall specify its effective and expiration dates. A copy of the certificate shall be posted during its effective period in a conspicuous place or places in the institution of higher education readily visible to all employees, for example, adjacent to the time clock or on the bulletin board used for notices to the employees. If temporary authorization is in effect under paragraph (a) of §519.14, a notice thereof shall be similarly posted during the effective period of such authorization.

(b) Full-time students may not be employed under a certificate at less than 85 percent of the minimum wage applicable under section 6 of the Act.

(c) An institution of higher education shall not employ full-time students at subminimum wages under this subpart in unrelated trades or businesses as defined and applied under sections 511 through 515 of the Internal Revenue Code, such as apartment houses, stores, or other businesses not primarily catering to the students of the institution.

(d) An institution of higher education subject to a finding by the Secretary that it is in violation of the requirements of section 14(b)(3) of the Act or of this subpart must be issued a full-time student certificate before it can employ full-time students at wages below those required by section 6 of the Act. The Administrator or his/her authorized representative will not issue a full-time student certificate to such an institution without adequate assurances and safeguards to insure that the violations found by the Secretary will not continue.

(e) Full-time students shall not be permitted to work at subminimum wages for more than 8 hours a day, nor for more than 40 hours a week when school is not in session, nor more than 20 hours a week when school is in session (apart from a full-time student's summer vacation), except that when a full-day school holiday occurs the weekly limitation on the maximum hours which may be worked shall be increased by 8 hours for each such holiday but in no event shall the 40-hour limitation be exceeded. (Note: School is considered to be in session for a student taking one or more courses during

a summer or other vacation.) Whenever a full-time student is employed for more than 20 hours in any workweek in conformance with this paragraph, the employer shall note in his/her payroll that school was not in session during all or part of that workweek or the student was in his/her summer vacation.

(f) Neither oppressive child labor as defined in section 3(1) of the Act and regulations issued under the Act nor any other employment in violation of a Federal, State or local child labor law or ordinance shall come within the terms of any certificate issued under this subpart.

(g) Full-time students shall be employed at subminimum wages under this subpart only outside of their school hours, *i.e.*, only outside of the scheduled hours of instruction of the individual full-time student.

(h) No full-time student shall be hired under a full-time student certificate for work in a unit or units of the campus where abnormal labor conditions, such as a strike or lockout, exist.

(i) No provision of any full-time student certificate shall excuse non-compliance with higher standards applicable to full-time students which may be established under the Walsh-Healey Public Contracts Act or any other Federal law, State law, local ordinance, or union or other agreement. Thus, certificates issued under this subpart have no application to employment under the Service Contract Act.

(j) No full-time student certificate shall apply to any employee to whom a certificate issued under section 14(a) or (c) of the Act has application.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

§519.17 Records to be kept.

(a) The employer shall designate each worker employed as a full-time student under a full-time student certificate at subminimum wages, as provided under part 516 of this chapter.

(b)(1) In addition to the records required under part 516 of this chapter and this subpart, the employer shall keep the records specified in paragraphs (b)(2) and (3) of this section specifically relating to full-time students employed at subminimum wages.